APPELLATE CRIMINAL.

Before Mr. Justice Tyabji.

1914. March 19 and April 23.

Re KARUTHAN AMBALAM AND ANOTHER (ACCUSED NOS. 1 AND 2), PETITIONERS. *

Criminal Procedure Code (Act V of 1898), ss. 90, 501 and 537—Arrest under section 90—Bond for appearance—Section 501, applicability of.

A warrant purporting to be issued under section 90 of the Criminal Procedure Code (Act V of 1898) for the arrest of an accused person who has been let out on his own bond is illegal unless the Court records its reasons as required by the section. The omission to do so is an irregularity not cured by section 537 of the Code.

Section 501 of the Code applies only to cases where there are sureties and where through mistake, fraud or otherwise insufficient sureties have been accepted; it does not apply to a case where there are no such grounds.

PETITIONS under sections 435 and 439 of the Criminal Procedure Code (Act V of 1898), praying the High Court to revise the judgment of A. RAMACHANDRA AYYAR, the Sub-Divisional Magistrate of Devakkottai, in Criminal Appeal No. 41 of 1913, preferred against the sentence of V. SRINIVASA AYYAR, the Second-class Magistrate of Tiruppattur, in Calendar Case No. 505 of 1912.

The petitioners, along with some others, were accused in Calendar Case No. 115 of 1912 on the file of the Court of the Stationary Magistrate at Tiruppattur and were convicted of an offence under sections 147 and 342, Indian Penal Code, except the first petitioner who was acquitted. The second petitioner did not appear on the day the judgment was pronounced; but subsequently appeared and was bound over to appear whenever required. There was a change in the magistracy soon after and the judgment against the second petitioner was pending. Meanwhile, the Sub-Inspector of Police who was in charge of the case represented to the acting Magistrate, Tiruppattur, that the second petitioner was likely to emigrate to Rangoon and must be arrested at once. A warrant of arrest was issued forthwith which led to

* Criminal Revision Case No. 768 of 1913 (Criminal Revision Petition No. 620 of 1913).

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the arrest of the second petitioner. The first petitioner forcibly dragged him away. The Second-class Magistrate of Tiruppattur convicted both the petitioners of offences under sections 225 and 224, Indian Penal Code. The lower Appellate Court confirmed the conviction. The petitioners preferred this revision petition to the High Court.

T. Ranga Achariyar and *R. Kuppuswami Ayyar* for the petitioners.

C. Sidney Smith for the *Public Prosecutor* for the Crown.

ORDER.—The question to be decided is whether the first and second accused were rightly convicted under sections 225 and 224 of the Penal Code for resistance or obstruction to lawful apprehension respectively. TYABJI, J.

The second accused was the person who was being apprehended. The case against him, it is common ground, depends upon the evidence of the first witness for the prosecution. It has been read out to me and I am of opinion that it discloses no case against the second accused of his having intentionally offered any resistance or illegal obstruction to the lawful apprehension of himself.

I am not prepared to say however that there is no evidence of his having escaped or attempted to escape from custody in which he was detained assuming that he was lawfully detained. He was in custody at the time when the first accused and others came to rescue him. Though the direct evidence is that the others "took him away," from that fact the inference that the second accused escaped with the assistance of those who "took him away" is not very violent or unreasonable.

The result is that I am not prepared to interfere on the finding of fact that the second accused escaped from lawful custody assuming that the custody was lawful.

The next question is whether the second accused was in lawful custody. He had been let out on his own bond to appear in the Court.

The Magistrate refers to the subsequent proceedings in his cross examination in the following terms:—

"I issued the warrant (Exhibit A) on the written requisition of the Sub-Inspector if I remember right. When I issued the warrant I did not ascertain whether the second accused had executed a bond for his appearance whenever required before

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this Court. I do not remember to have recorded any reasons for issuing the arrest warrant."

The warrant issued was in Form No. II under Schedule V to the Criminal Procedure Code which purports to have some reference to section 75 of the Criminal Procedure Code. That is the common form. It is argued before me first that the Magistrate must be taken to have proceeded under section 90. Several objections are taken to this argument. One is that section 90 requires reasons to be recorded and this has not been done. I am of opinion that the warrant was vitiated by this fact. It is argued that the omission to do so is such an irregularity as is contemplated in section 537 and that the conviction should not for that reason be quashed. I think however that assuming that section 90 applies to a case of this kind the recording of reasons is a necessary preliminary to the exercise of the jurisdiction and the omission to do so cannot be overlooked. In this connection I must advert to the provisions of sections 91 and 92. The latter section has reference to the case of a person who is bound by a bond to appear in Court. It provides for a warrant only in case the person does not appear at the time when he is bound to appear, it does not therefore apply to a case like the present where prior to the time for appearance arrest by warrant is sought to be effected. Section 92 not being directly applicable, I will assume (without expressing any opinion on the point) that Mr. Smith's argument for upholding the conviction was sound and that in such a case as the present a warrant for arrest under section 90 may be lawfully issued. If so it seems to me that it is in effect setting aside the previous order of the Court by which the accused was let out on his own bond. The legislature requires in such a case that the reasons for proceeding by warrant should be recorded in writing. It is on this ground that, assuming the warrant was as a matter of fact purported to be issued under section 90 and assuming that it could lawfully be issued under the section, it is a necessary preliminary for the exercise of the power that reasons should be given in writing; and failure to do so vitiates the warrant in my opinion.

Another argument taken before me was that the warrant could have been issued under section 501 of the Criminal Procedure Code. Section 501 applies to a case where there are

sureties and where through mistake, fraud or otherwise insufficient sureties have been accepted. The section is obviously inapplicable and the point was not pressed before me. The convictions will be set aside and the fines, if paid, will be refunded.

S.V.

Re KARUTHAN AMBALAM.

TYABJI, J.

APPELLATE CRIMINAL.

Before Mr. Justice Spencer and Mr. Justice Seshagiri Ayyar.

VENKATRAMA AIYAR AND TWO OTHERS (ACCUSED), PETITIONERS,

v.

KRISHNA AIYAR (COMPLAINANT), RESPONDENT.*

1915. January 19, 20 and 25.

Criminal Procedure Code (Act V of 1898), ss. 250 and 423—Compensation, order for—Appeal—Notice to the accused, order without, improper but not illegal—Complaints, false as well as frivolous or vexatious.

In appeals under section 250 of the Code of Criminal Procedure, notice should ordinarily be given to the accused even though failure to give notice may not render the proceedings of the Court illegal.

Emperor v. *Palaniappavelan* (1906) I.L.R., 29 Mad., 187, approved.

Ambakkagari Nagi Reddy v. *Basappa of Medimakulapalli* (1910) I.L.R., 33 Mad., 89, followed.

Guruswami Naicken v. *Tirumurthi Chetty* (1915) 27 M.L.J., 629, explained.

Alagirisami Naidu v. *Balakrishnasami Mudaliar* (1903) I.L.R., 26 Mad., 41, *Imperatrix* v. *Sadashiv* (1898) I.L.R., 22 Bom., 549, *In the matter of the petition of Umrao Singh* v. *Fakir Chand* (1881) I.L.R., 3 All., 749 and *In the matter of Teacotta Shekdar* (1882) I.L.R., 8 Calc., 893, referred to.

Section 250 not only refers to false complaints but to frivolous and vexatious complaints as well.

Emperor v. *Bindesri Prasad* (1904) I.L.R., 26 All., 512 and *Beni Madhub Karim* v. *Kumud Kumar Biswas* (1903) I.L.R., 30 Calc., 123, referred to.

Ram Singh v. *Mathura* (1912) I.L.R., 34 All., 354, doubted.

Per SPENCER, J.—Section 250 does not declare what the powers of an Appellate Court are in disposing of appeals under clause (3) of the section. It is therefore necessary to invoke the aid of section 423 for the purpose.

Per SESHAGIRI AYYAR, J.—The powers of the Appellate Court to grant redress have to be gathered from section 423. Section 250 is not self-contained as are sections relating to grant of sanction and to convictions for contempt (sections 195 and 486). Chapter XXXI of the Criminal Procedure Code applies to appeals against orders under section 250 of the Code.

* Criminal Revision Case No. 238 of 1914, (Criminal Revision Petition No. 205 of 1904).